THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.26504 of 2006

ORDER:

This writ petition is filed seeking a Mandamus declaring the proceedings Rc.No.E5/48153/2006-1 and Rc.No.E5/48153/2006-2 dated 7.12.2006 issued by the first respondent as arbitrary and illegal.

According to the petitioner, respondents 3 and 4 who were appointed initially in Hyderabad district were transferred to Nellore and Mahabubnagar districts long ago and they have become part and parcel of establishment of Nellore and Mahabubnagar districts. They have no lien of their posts in Hyderabad district. District is a unit for the purpose of seniority, promotion and transfer. The respondents 3 and 4 who were transferred long ago cannot be treated as employees of Hyderabad district unit. The respondents 3 and 4, who were transferred to Nellore and Mahabubnagar districts on their own request, cannot be permitted to reckon their seniority in Hyderabad district. Therefore, they are not entitled for being promoted as Executive Officer Gr.III. Promotion by way of transfer of respondents 3 and 4 is arbitrary and illegal apart from being contrary to the Presidential Order. Petitioner is fully qualified and eligible for being promoted to the post of Executive Officer Gr.III and he is working in Hyderabad city since his initial appointment i.e. in the year 1993.

The respondents filed a detailed counter denying the allegations made by the petitioner and asserted that according to Section 29(3) of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30/87) (for short 'Endowments Act'), twenty percent of vacancies in each grade of Executive Officers shall be filled by the employees belonging to institutions or Endowments of prescribed

grade. Government also issued service rules vide G.O.Ms.No.262, Revenue (Endts.I) Department dated 20.5.2002. Under the said rules, there is a provision for appointment of temple employees under twenty percent quota as Executive Officers Gr.I, Gr.II and Gr.III by transfer of service. The petitioner and respondents 3 and 4 are only temple employees and they are governed by the rules made under G.O.Ms.No.888 dated 8.12.2000. According to service rules applicable to temple employees issued under Section 35 of Endowments Act vide G.O.Ms.No.888 Revenue (Endts.I) Department dated 8.12.2000, each temple is a unit for the purpose of appointment, seniority etc. Moreover, petitioner is a temple employee and non-government servant and the Presidential Order has no application to non-government servants. Two vacancies of Executive Officers Gr.III are earmarked for Junior Assistants working in temples/institutions working in Hyderabad district and petitioner stands at Serial No.23 in the seniority list. The third respondent was originally appointed as Junior Assistant in the establishment of Sri Venkateshwara Swamy Devasthanam, Chikkadpally, Hyderabad in the year 1983 and later he was transferred to Nellore district on some personal grounds in the year 1985 and continued there. He was first appointed at Hyderabad temple and his lien is maintained at Hyderabad. Since the third respondent was initially appointed at Hyderabad district and working in Nellore district on transfer and in accordance with G.O.Ms.No.888 Revenue (Endts.I) Department dated 8.12.2000, each temple is a unit for appointment, seniority etc., his case was considered for appointment to the post of Executive Officer Gr.III as he passed all the requisite tests and eligible to hold the post of Executive Officer, Gr.III as per rules made in G.O.Ms.No.262, Revenue (Endts-I) Department dated 8.5.2002. Hence the appointment of third respondent as

Executive Officer Gr.III cannot be said to be either arbitrary or illegal.

Likewise, the fourth respondent was appointed initially as Junior Assistant in the establishment of Sri Hanuman Temple, Vijayanagar Colony, Hyderabad on 20.9.1989. At the time of considering the temple employees for the post of Executive Officer, since the fourth respondent was originally appointed in Hyderabad and working at Mahabubnagar district as Manager and according to G.O.Ms.No.888 dated 8.12.2000, each temple is a unit for appointment, seniority, promotion etc., his case was considered for appointment as Executive Officer, Gr.III. Therefore, petitioner cannot question the appointment of respondents 3 and 4 as Executive Officer Gr.III as he was appointed as Junior Assistant only in the year 1993, much after the appointment of respondents 3 and 4 in Hyderabad district.

Heard both sides.

During the course of arguments, the learned Government Pleader has taken an objection as to the very maintainability of writ petition stating that the petitioner is questioning the promotion of respondents 3 and 4 as Executive Officers Gr.III who are governed by the Rules made under Article 30 of the Constitution of India, therefore, he should have approached the Administrative Tribunal by filing O.A. for working out his remedies. Further, the petitioner is also basing his claim as per those rules.

The learned counsel for petitioner Mr.P.Balakrishna Murthy, in this regard, contended that governing the service conditions of the petitioner, no rules are made under Article 309 of the Constitution of India. As of now, petitioner is only a temple employee, therefore, he cannot be treated as a person who can maintain Original Application (OA) before the Administrative Tribunal. Section 3 read with Section 19 of Administrative Tribunals Act would not bar the jurisdiction of this

Court. Section 19 of Administrative Tribunals Act does not include a temple employee and the petitioner is not governed by any rules made under Article 309 of the Constitution of India as of now. Sections 3 and 19 of the Administrative Tribunal's Act reads as under:

Section 3:

In this Act, unless the context otherwise requires;

(a) 'Administrative Member' means a member of a Tribunal who is not a Judicial Member within the meaning of clause (i);

(aa) 'Administrative Tribunal' in relation to a State means the Administrative Tribunal for the State or, as the case may be, the Joint Administrative Tribunal for that State and any other State or States:

(b) 'Application' means an application made under Section 19;

(c) 'Appointed day' in relation to a Tribunal means the date with effect from which it is established, by notification under Section 4;

(d) 'appropriate Government' means ;

(i) in relation to the Central Administrative Tribunal or a Joint Administrative Tribunal, the Central Government;

(ii) in relation to a State Administrative Tribunal, the State Government;

(e) 'Bench' means a Bench of a Tribunal

(f) 'Central Administrative Tribunal' means the Administrative Tribunal established under sub-section (1) of Section 4;

(g) 'Chairman' means the Chairman of the Tribunal;

(h) 'Joint Administrative Tribunal' means an Administrative Tribunal for two or more States established under sub-section (3) of Section 4;

(i) 'Judicial Member' means a Member of a Tribunal appointed as such, under this Act, and includes the Chairman or a Vice Chairman who possess any of the qualifications specified in sub-section (3) of Section 6;

(ia) 'Member' means a Member (whether Judicial or Administrative) of a Tribunal, and includes the

Chairman and a Vice Chairman"]

(j) 'Notification' means a notification published in the official Gazette;

(k) 'Post' means a post within or outside India;

(l) 'Prescribed' means prescribed by rules made under this Act;

(m) 'President' means the President of India;

(n) (omitted by Act 19 of 1986).

(o) 'Rules' means rules made under this Act;

(p) 'Service' means service within or outside India;

(q) 'Service matters' in relation to a person, mean all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects;

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matters whatsoever;

(r) 'Service rules as to redressal of grievances', in relation to any matter, mean the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal, otherwise than under this Act of any grievances in relation to such matters.

(rr) 'Society' means a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State;

(s) 'Supreme Court' means the Supreme Court of India;

(t) 'Tribunal' means the Central Administrative Tribunal or a State Administrative Tribunal or a Joint Administrative Tribunal.

(u) 'Vice Chairman' means the Vice Chairman of a Tribunal.

Section 19:

Application to Tribunals:

(1) Subject to the other provisions of this Act a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation: For the purposes of this sub-section 'order' means an order made:-

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any Corporation (or society) owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation (or society) referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) (in respect of the filing of such application and by such other fees for the service of execution processes, as may be prescribed by the Central Government").

(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons".

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievance in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such Rules".

Insofar the maintainability of writ petition is concerned, a ticklish question arises for consideration. Petitioner, as of now, is a temple employee and not a government employee governed by the rules made under Article 309 of the Constitution of India. Whereas as per regulations made under G.O.Ms.No.262 Revenue (Endowments-I) Department dated 20.5.2002, he is also entitled for being promoted to the post of Executive Officer Gr.III, since the post of Junior Assistant is one of the feeder posts for consideration for promotion to the post of Executive Officer Gr.III. Therefore, so long as the petitioner is not promoted to the post of Executive Officer Gr.III, he is not governed by the rules made under Article 309 of the Constitution of India. But, as per rules he has right to claim promotion to the post of Executive Officer being a Junior Assistant and an employee governed by Temple Service Rules. The Rules with regard to promotion of Executive Officer Grade-III reads as under:

"**Executive Officer, Gr.III**

(i) by direct recruitment;

(ii) by transfer from the category of Junior Assistants of Andhra Pradesh Ministerial Service in the Endowments Department and **Junior Assistants working in the institutions published under Section 6(a), (b), (c) and (d) of the Act** other than Regional Joint Commissioner and Deputy Commissioner cadre institutions."

In view of the above rule, the submission of the learned counsel for petitioner that there is every reason to believe that the O.A., if any,

filed by the petitioner could have been dismissed as not maintainable, cannot be ruled out. As such, I am of the opinion that the petitioner has an option, till he is promoted to the post of Executive Officer Gr.III, either to approach this Court under Article 226 of the Constitution of India or approach the Administrative Tribunal and work out his remedies. But the petitioner cannot be thrown out at the threshold saying that the very writ petition is not maintainable.

Insofar as merits of the case are concerned, it is not in dispute that the respondents 3 and 4 were appointed in Hyderabad district in the year 1983 and 1989 respectively, whereas petitioner was appointed in the year 1993. But the matter that requires to be examined is whether the respondents 3 and 4 who were transferred to Nellore and Mahabubnagar district respectively are entitled to claim seniority in Hyderabad district unit in the cadre of Junior Assistants for the purpose of promotion to the post of Executive Officer Gr.III and whether they have any lien in Hyderabad district.

Though the learned Government Pleader appearing for official respondents placed the records before this Court and submitted that while the respondents 3 and 4 were transferred to Nellore and Mahabubnagar districts respectively, their lien was protected in Hyderabad, a perusal of the record would clearly show that respondents 3 and 4, on their own request, were transferred to Nellore and Mahabubnagar districts respectively. Absolutely, there is no record to show that the lien of respondents 3 and 4 is maintained in Hyderabad district. Therefore, the question of protecting or maintaining their seniority in the cadre of Junior Assistants in Hyderabad district does not arise. Further, it is interesting to notice that respondents 3 and 4 were transferred in the year 1985 and 1999 respectively and the rules made under the above G.O. have no

retrospective effect. As such, the respondents cannot claim any thing under those rules. In fact, they are not entitled to reckon their seniority in the revenue district of Hyderabad, which is a unit for all purposes, such as, seniority, promotion etc. Therefore, I am of the opinion that the promotion of respondents 3 and 4 by way of transfer as Executive Officers Gr.III is arbitrary and illegal.

For all the above reasons, the writ petition is allowed and the impugned orders dated 7.12.2006 are set aside. Further, the respondents 1 & 2 are directed to consider the case of the petitioner for being promoted to the post of Executive Officer Gr.III, if he is otherwise eligible as per law. No order as to costs.

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C.V.RAMULU, J

Date: .12.2007
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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.26504 of 2006

.12.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.26504 of 2006

Date: December, 2007

Between:

M.Muralidhar

.. Petitioner

And

The Commissioner of Endowments,
Andhra Pradesh, Boggulkunta, Tilak Road,
Hyderabad & others.

.. Respondents